

Councillors who meet privately likely breaking the rules, says lawyer

Discussing issues and making decisions ahead of council sessions is not allowed

BY JEFF LEE, VANCOUVER SUN SEPTEMBER 23, 2015



Vision Councillor Raymond Louie was surprised to learn Wednesday that he and his fellow councillors have likely been breaking the law by meeting in private ahead of regular council sessions. Louie is seen here in 2011 with Mayor Gregor Robertson.]

Photograph by: Gerry Kahrmann, PNG

The Vision Vancouver majority on council may be violating the province's open meeting laws by conducting caucus meetings before their regularly-scheduled council sessions, a veteran lawyer familiar with municipal law said Tuesday.

Raymond Young said councillors cannot meet together when they have a quorum without holding those meetings in public or under rules that limit in camera closed-door meetings to a narrow list of legitimately confidential issues.

In Vancouver, a quorum of the 11-member council is six. Vision Vancouver has seven members, including Mayor Gregor Robertson. Vision councillors regularly caucus in the mayor's office before

council meetings. In council, their votes are virtually unanimous and they tightly whip their caucus around issues, even giving portfolios to councillors.

"If they are caucusing, they have a problem. That's a council meeting," said Young, one of B.C.'s senior lawyers on municipal law. He was a founding partner of Young Anderson, one of B.C.'s best-known firms specializing in municipal law.

Young made the comments following a packed session at the Union of B.C. Municipalities convention in Vancouver where he reviewed B.C.'s municipal rules on open meetings.

He told the audience many politicians don't understand the law and the impact when it is broken. In the United States, where such legislation is more rigorously enforced, councillors can be fined for holding "illegal" meetings. In Washington, the fine can be \$100; in Wisconsin \$360; in Ohio and Arizona, \$500, and in Oregon up to \$1,000 per violation. They also can't take the oath of office without a short course on the rules around open meetings.

In an interview later, Young said the law is lax in B.C. and needs to be strengthened.

"Our legislation doesn't have fines, jail sentences, certification or enforcement rules," he said. "The enforcement rule is you go to court and set aside the decision and have to do it again."

When asked if council caucuses before council meetings could violate the rules if a party holds power and forms quorum, he said yes.

"If they are caucusing before each council meeting and they've got the agenda out two or three days before the council meeting and they know what the issues will be ... all of that is a council meeting, and it is an unlawful meeting," he said, especially if they decide who will make a motion, second a motion and lead in discussion.

Young's statements startled both Vision Vancouver acting mayor Raymond Louie and Coun. Elizabeth Ball, chairwoman of the Non-Partisan Association's caucus.

Louie said the implications are serious and that he has asked the city's legal staff for a response.

"I think it is important we answer the question ... what is legal and what is not," Louie said.

He would not discuss how often the Vision council meets in caucus, what they talk about or whether they make decisions.

Ball said she also wants clarification.

She said the NPA councillors, which don't have a majority on council, sometimes meet to discuss issues. But they all agree not to make any decisions.

Peter Fassbender, the minister responsible for municipal affairs, said he agrees that elected politicians should have a better understanding of open meeting laws. But he drew the line at imposing sanctions or enforcement when those laws are broken.

"I think education is the first step and I know UBCM works hard to do that."

Young said that even when councillors email, text or call each other serially, or sequentially, they could be considered to be having a meeting. Even informal meetings such as a breakfast at a house can become an illegal meeting if the conversation turns from the weather to a city issue, he said.

"Maybe they're talking about raising taxes a little bit so they can do this or that. It's a nice breakfast and they go home and think, 'Well, we accomplished something today, probably bring that up in council one day.' That was a council meeting," Young said.

Jonathan Baker, a lawyer who deals with municipal law and a former NPA councillor, said Vision Vancouver can have meetings to discuss general administration of a council meeting, but should not be discussing issues on the agenda.

"They should not be doing that," he said. "They shouldn't be doing a poll of whether they are for or against (an issue). And they shouldn't be discussing the merits. That discussion should all take place in public."

He noted, however, that when he was on city council, the NPA had occasionally held a caucus meeting to discuss and decide on issues.

"We were probably doing that illegally, I guess," he mused.

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